

WISE (P.M.)

THE BARBER CASE.

The Legal Responsibility of
Epileptics.

BY
P. M. WISE, M. D.,
Willard, N. Y.

FROM
American Journal of Insanity,
January, 1889.
UTICA, N. Y.



THE BARBER CASE.

THE LEGAL RESPONSIBILITY OF EPILEPTICS.

BY P. M. WISE, M. D.,
Medical Superintendent, Willard Asylum for the Insane, Willard, N. Y.

The case about to be reported, presents some unique features that deserve a permanent record; not only as an illustration of the conception of epilepsy and mental responsibility of epileptics, by the ordinary lay mind, as presented in the verdict of the jury, but as a very marked instance of constancy in the transmission of one form of nervous disease, for three generations.

Attention may also be properly directed to the weight given by expert evidence, to the absence of motive for the commission of the crime, as a measure of responsibility, and to the legal *criteria* of responsibility as laid down by the court in charging the jury. The antecedent history of the prisoner in connection with the character of the crime and the weight of evidence favorable to irresponsibility, may well create surprise that at least a "reasonable doubt" was not established. It is another instance to be added to the long record of cases, in which the American jury system may fairly be considered incompetent, to determine questions of a scientific nature. The fact that a coherent act may be committed by a person in the unconscious epileptic state, is incomprehensible to the average jurymen. Such a statement of fact, whatever may be the authority enunciating it, is measured

"with a sense as cold
As is a dead man's nose."

THE BARBER CASE.

Richard Barber, aged 27 years, a native of Billingsboro, England, emigrating to America at the age of 19, a resident of Ulysses, N. Y., was indicted on the 22d of March, for the murder of Ann Mason on the night of the 16th of March, 1888. He was brought to trial in the Tompkins Circuit of the Supreme Court, October 15, 1888, Hon. Walter Lloyd Smith, Justice, presiding. There appeared for the people Clarence L. Smith, District Attorney, and David M. Dean, counsel; and for the defendant, George B. Davis and A. A. Hungerford, all of Ithaca.



It appears that at the indictment, the prisoner pleaded "not guilty" with the specification of insanity; that the Court appointed a Commission consisting of Drs. W. C. Wey, of Elmira, and Willis E. Ford, of Utica, and Hon. Marcus Lyon, to inquire into the sanity of the prisoner. At the assembling of the Commission eleven days after the indictment, an examination led to the finding, that Barber, at the time of the alleged commission of the crime charged against him, and at the examination, was of sound mind. The Commission reported to the Court on April 19, and on the same day, the date of trial was fixed at June 6, 1888. But upon application of the defendant's attorney, the Supreme Court issued a commission to take evidence in England, at the early home of Barber, and where the immediate relatives of Barber resided, and set down the trial at a later date.

These are, in brief, the technical preliminaries of the trial of Richard Barber, for the most atrocious and fiendish murder ever committed in Tompkins county.

The only witness of the crime was Richard Mason, the husband of Ann Mason, the victim. It appears that Barber left the house at which he was living, in the early evening, with the avowed purpose of visiting the Masons, with whom he held the closest friendly relations, and whom he considered his "best friends in America." It was customary for him to make them occasional visits when he was working within easy distance from them, and at such times would entertain Ann Mason by playing upon the accordeon. His affection for Ann Mason was well shown, in his purchase of a music box for her, costing about twenty-five dollars, notwithstanding he was extremely frugal and spent very little money for his own entertainment. This he intended to present to her before leaving for a distant place where he had engaged to work during the summer. He gave as his reason, that as she liked music, and would miss his playing, she could then furnish her own music by "turning a crank." This is related as an indication of the friendly feeling, then existing, between Barber and the Masons, on the eventful evening of the crime.

Richard Mason was certified as insane at the time of Barber's trial, and his testimony, perpetuated by order of the Court, at an examination of him on the 18th of April, was read in evidence. In substance, Mason testified that at 9 P. M., on the 16th of March, as he was coming from his barn to the house, he saw Barber standing near the back door of his house, when he invited him in. They engaged in conversation for about an hour, Mason asking Barber

to remain all night and inviting him to take some apples. In Mason's words, "we were talking and visiting entirely pleasant; Barber and I were on the best of terms; nothing had ever occurred between us; we were just as good friends as kittens." Ann Mason had retired to bed in an adjoining room, previous to Barber's coming into the house. Mason was standing up paring an apple to eat, and as he started to pass Barber to sit down the latter made a sudden assault upon him. "He struck me on the back of the head three or four times and knocked me down and cut my head with something, I did not see what it was. He knocked me senseless on the floor. *It seems to me* I got up and turned around to him and said 'did you strike me,' and he said 'no,' just as calm as could be, and I did not know where the blow came from. Then he struck me three or four times, and I fell in an opposite direction." Mason then called to his wife in the adjoining room, but received no reply. "Barber then went directly to my wife's room and commenced pounding her. She hallooed murder and screamed quite loud. She screamed four or five times. I heard him continue pounding her, and heard her groan. The groanings and screamings ceased after a while, long enough for her to die." Mason's evidence made it appear that Barber came out and assaulted him again, and then returned to his wife's room, repeating the assaults upon her and back again, at which time Mason had crawled underneath a high-legged bureau. He then asked Barber why he didn't go away, without receiving a reply. His evidence at this point is a little confusing, but bears a presumption that considerable time elapsed, perhaps half an hour, before Barber left the house. He threw the hearth rug and cushion over Mason's legs as he was lying under the table "and put kerosene on them from the lamp, and set them on fire." Mason kicked them off, when Barber "picked up the rug and cushion and accordeon and put them on the table in the corner of the room, poured oil on them and set them on fire. Then he had the door knob in his hand and kept looking out, north and south. Then he kept watching the fire and when it got up to a pretty good headway, and in a few minutes I said, 'why don't you go away. I can't get out of here, but will lie here and perish and burn up with my wife.' That is the last I saw of him. My wife lay in the room dead in bed, I expect. There was blood on the floor, piles of it. The lamp fell down and great smoke rose up and flames and I crept out of doors to the wood pile in the orchard."

A small pile of kindling wood was lying in front of Mason and Barber, as they were conversing previous to the assault. The pieces were about sixteen inches long and two inches in thickness. The wounds inflicted upon Mason indicated that they were made by a piece of this wood, as there were no fractures, although there were many scalp wounds.

The fire soon attracted notice and brought assistance. Mason was removed to a neighboring house. The next seen of Barber was upon the highway, less than a mile from the burning house. He was met by a citizen of the village driving past him on his way to the fire, who knew of the tragedy and its author. He recognized Barber and stopped. Barber did not in any way try to elude him and accepted his invitation to ride back to the village with him. On the way the driver invited Barber to go to a dance in the village with him, and he signified his willingness to do so. After reaching the livery barn and opening the doors for the driver, and without waiting for him, he walked away. The driver immediately gave notice to an officer near at hand and Barber was arrested within a few rods of the barn. He made no resistance or attempt at escape, and although surrounded in a few moments by a group of excited men who threatened to lynch him, he was calm and did not reply. Upon searching him a small amount of silver (less than one dollar) and a few trinkets were found. He was immediately taken before Mason who identified him, and when accused of striking Mason and his wife, he said "I do not remember doing it." This statement he has resolutely adhered to throughout the various examinations that have been held of him. Ingenuity has been exhausted in efforts to get some acknowledgment from him, that he had a recollection of the event of that night, but not even a shadow of an admission has been got from him. He pertinaciously adheres to the statement, "I do not recollect doing it," or, "I suppose I must have done it, as everybody tells me I did, but I do not remember it." He stated, the last incident of that evening that he could recollect, was eating apples with Richard Mason.

The evidence of Mason and the finding of the remains of Ann Mason in the burning house, established the *corpus delicti*.

The line of defense rested chiefly on an inherited epileptic diathesis; epilepsy in the prisoner until the age of nine years; symptoms of nocturnal fits the preceding winter and the absence of motive for the crime. Without reference to the testimony obtained by the English Commission, or the defendant's witnesses, the hypothetical question prepared by Mr. Davis, defendant's counsel,

and put to the experts, will follow. It contains the substance of the direct evidence, and is not only skillfully formulated, but presents the evidence bearing upon the prisoner's responsibility in a fair and impartial manner. Quite contrary to usage, the prosecution did not present a hypothetical question in their cross-examination.

QUESTION.—“The defendant, Richard Barber, is twenty-seven years of age, and unmarried. He was born at Billingsboro, England, and there resided until nineteen years of age. Since that time he has resided in the vicinity of Trumansburgh, N. Y.

“Defendant's great-grandfather, had hemiplegia, or paralysis, and was to a certain extent maniacal previous to his death. His grandfather was affected by epilepsy and during one of these attacks inflicted great injury upon a friend who was trying to restrain him. His father's brother was an epileptic, and died by falling into a ditch during an epileptic fit. His aunt was an epileptic, became insane, and is now confined in a lunatic asylum at Lincolnshire, England. Another aunt is a confirmed epileptic. His cousin developed epilepsy at the age of twenty, and has had epileptic fits many times since; and when he has them, it requires several men to hold him until these attacks are over. Another cousin's two children have been subject to epilepsy. His grandfather's cousin was subject to epileptic fits, and committed suicide by hanging. The above named people were very violent during the attack of epilepsy. His oldest sister died at the age of two years in an epileptic fit. His sister next younger than the defendant died at the age of ten months, in an epileptic fit. His brother, aged twenty-three, had epileptic fits occasionally, up to the time of his leaving England three years ago. His sisters, aged respectively twenty and eighteen, suffered severely from fits until about eight years of age. His brother, aged thirteen, also had fits until he was about eight years old. His brother, aged twelve, has been subject to fits all his life, and these fits were very violent. His brother, aged nine years, had epileptic fits until he was eight years old. His cousin has been subject to epileptic fits. The defendant, Richard Barber, had fits, which were accompanied by delirium and violence during the attack, and for a short time after, almost weekly and sometimes several in a week, until he was nine years old. That all the above named family are at times highly nervous and excitable. His grandfather and aunt were especially excitable, and passionate and impatient of control or contradiction. That simple indisposition in the above named family—feverish, stom-

achic, catarrhal or otherwise, caused extreme nervousness, violence and delirium. That these convulsive attacks rendered said Barber temporarily maniacal, followed at times by great mental prostration, and he was always very violent during these epileptic attacks and had to be restrained by force to prevent his doing an injury to himself and others; the most violent part of the attack lasting about fifteen minutes and the entire attack about an hour or an hour and a half. While in England the said Barber was treated by Thomas Blason, a physician, a great many times for epilepsy and convulsive seizures. He had over four hundred of these attacks before he was nine years old. The said Barber while living in England displayed a good-natured, pleasant disposition, was very kindhearted and a good, attentive, affectionate son and brother. He was temperate, steady, a regular attendant at church and an industrious workman. During the eight years Barber resided in this country, he has worked industriously most of the time out of doors; been regular and temperate in his habits and much respected by his acquaintances, and never committed or was accused of any crime, previous to the present one. While said Barber made his home at the house of Thomas Donahue for whom he had worked and with whom he had lived several years, he was severely afflicted with a certain skin disease which caused great irritation and suffering. Said disease, on the application of ointment produced a raw condition of the skin, so that portions of his body at one time looked red, inflamed and the color of "hog's liver." He complained of itching and smarting of the skin, and said that he felt as though there were "bumble bees all over him." Said irritation prevented him from sleeping nights. He had a haggard, pale look and it affected his general health and made him quite nervous. During the winter and a year or two before he complained a good deal of pain in his head, and was somewhat abstracted and moody and did not associate with young people to any extent. He could not sit in a warm room for any length of time and used to sit in a cold room or go to a chamber room by himself. The sheets of the bed during the winter were frequently soiled with blood and water, and the bed was frequently stained, as though wet with urine and semen. During the winter of 1887-8, the defendant had been afflicted with incontinence of urine during the night, although to no great extent."

(Here follows the relations of the defendant to Richard and Ann Mason and a description of the commission of the crime and the manner of his arrest, heretofore described.)

"That he has been in jail since the 17th day of March, and that while in jail he was observed to have an epileptic fit, or *petit mal*, or light epileptic seizure, and has displayed some fury.

"Fully considering the above facts ; the medical history of his family, and of the defendant ; the character and details of the crime ; the acts of the prisoner subsequent thereto, what would be your opinion as an expert as to the condition of the accused at the time of the commission of the crime?"

The answers to this question, given by expert witnesses summoned by defendant's counsel, stand substantially as follows:

Mr. F. B. Sanborn: The facts appear to me to indicate no other conclusion, than that the defendant was at the time of the commission of the act, in what we call an epileptic fury.

Dr. P. M. Wise: Assuming the crime was purposeless,—without a motive—it is my opinion he committed it while in the unconscious, epileptic state.

Dr. H. E. Allison: If the act was motiveless, there would be a strong probability that it was performed by a person in the condition of epilepsy.

Dr. G. Alder Blumer: I should say unhesitatingly, and with a sense of conviction that nothing else could shake, that at the time of the commission of the alleged crime, he was suffering from epileptic insanity.

Dr. Robert T. Morris: I believe that he was then in a condition of mind known as epileptic insanity, or epileptic furor.

Dr. M. D. Blaine: I should consider at the time of this crime, he was in a condition that may precede or follow an epileptic attack, called epileptic furor.

Dr. John Kirkendall: His mind was, at that time, under the influence of *petit mal*, with the result afterward, of epileptic mania, which rendered him unconscious for the time being.

Dr. J. A. Lewis: He was in a condition of an epileptic in an attack of furor. The same opinion in substance was held by Drs. R. L. Smith, C. A. Richards and M. B. Goodyear.

The following are answers elicited from witnesses summoned by the people.

Dr. Willis E. Ford: He might or might not be an epileptic.

Dr. William C. Wey: I think he was a sane man. Your hypothetical question does not change my judgment.

Dr. Floyd S. Crego: If there was no motive, I should think he was suffering from epileptic mania at that time, and was irresponsible.

Several other physicians of the locality, testified substantially that Barber was sane and conscious, when he committed the crime.

Drs. Ford and Wey, who, it will be seen give answers unfavorable to the theory of irresponsibility, were members of the lunacy commission to examine Barber, relative to his insanity, in April. At that time neither the family history of the prisoner, the evidence of *petit mal* in the jail or of nocturnal epilepsy, the preceding winter, were before the commission.

The prosecution, in rebuttal, endeavored to show, circumstantially, a motive on the part of Barber. It appears that Mason had about one hundred dollars in the house, but that this was known to Barber was not established, and there was no evidence showing that he had taken the money, or attempted to take it. His looking out of the door before leaving the house; his occasional answers to Mason's queries; the absence of blood on his clothing, although Mason bled freely; the discovery of foot prints of a number seven shoe in the snow two days after the event, leading in a zigzag direction away from the house, and occasionally turning as if the wearer was looking at the fire,* and the fact that he walked away from the barn in the village, instead of waiting for his companion to complete his engagement, were urged as facts supporting a theory of a knowledge of the act and a desire to escape.

The experts of the first part did not consider any of these facts as inconsistent with an epileptic condition at the time of the commission of the crime, and they were united in not modifying their opinion, expressed in their answer to the hypothetical question of the defense. The prosecution drew from several of their expert witnesses an expression of belief that the fits from which Barber suffered "weekly and sometimes twice a week"—convulsive seizures that attacked him suddenly and left him in "a condition of delirium and violence" for from one to two hours—attacks that were witnessed more than forty times by a member of the Royal College of Surgeons of England and a practitioner for thirty-two years, and by him designated as "severe epileptic fits," and of which he had more than four hundred up to the age of nine years, were "worm fits," or the ordinary eclampsia of childhood, and was not epilepsy. It is hardly necessary to comment upon such an opinion. The reader will have no difficulty in drawing an inference, and perhaps the court had this answer in mind when he gave to the jury the perti-

* It was shown by actual measurement, at the trial, that the shoe the prisoner wore upon that night was a number nine, although the witnesses were positive the track was made by a number seven shoe.

ment query, "What weight is the opinion of the (expert) witness in any event upon the question?"

There was no exception in the expert evidence offered by either side, that if the prisoner was, at the time of committing the crime in a condition of epileptic mania, he was unconscious of the act, and consequently was not responsible.

The judge in his charge to the jury was sufficiently specific in his definition of legal responsibility, but in the following instruction,—and to the writer it appears justly so,—exception was taken by the defendant's counsel.

"You will therefore see that there may be a very broad difference between what medical men define as insanity, and legal responsibility. No matter how insane a man may be, no matter how much under the influence of an epileptic attack, or epileptic furor, no matter by what force impelled, resistible or irresistible, if this defendant at the time he did the act knew the nature and quality of the act, and knew that it was wrong, then, gentlemen of the jury, he is in the eye of the law legally responsible for the act that he has done, and if that act constitutes a crime, he must suffer the punishment which the law prescribes."

Certainly we cannot see the force of this reasoning even through the spectacles of law. It stands as remote from the advanced position of Judge Montgomery, in the Daley case,* as that was from the time-worn precedent, the unscientific precedent established by the acceptance of Lord Erskine's famous plea of one hundred years ago. Mark the difference! Judge Montgomery declares in his instruction to the jury, "If he did know (*i. e.* the nature and quality of the act, and that the act was wrong) but by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed, and if so, if the homicide was so connected with such mental disease, in the relation of cause and effect as to have been the product of it solely; if some controlling mental disease was in truth the acting power within him, which he could not resist, then he will not be responsible."

Judge Smith further charged the jury, "that it is not necessary for the people to show to you that there was an adequate motive for this act. It is not necessary for the people to show you what his motive was, but they claim that the reason and the method

* A Judicial Advance—The Daley Case, by W. W. Godding, M. D., AMERICAN JOURNAL OF INSANITY, October, 1888.

and the plan and design, apparent in the act which he did, in itself indicate sanity, and indicate that there was motive for the act itself."

Surely, this ruling of the court eliminates one of the most important tests of insanity and responsibility, in relation to the alleged morbid condition of the prisoner. From the medical expert's standpoint, it was a reasonable and vital prayer of the defendant's counsel, that the judge charge "that motive is an essential element of the crime which cannot be presumed, but must be established by a preponderance of proof as much as any other element. It is in cases of circumstantial evidence that the motive often becomes not only material, but controlling, and in such cases the facts from which it may be inferred must be proved. It cannot be imagined any more than any other circumstance in the case. If the jury believe the prosecution has not established any motive for the crime by competent and legal evidence and beyond reasonable doubt, it should be regarded as important on the question of epilepsy. The judge refused, however, to modify his charge.

The law is supposed to have a certain preconceived standard of criminality. The mind of the alleged criminal must be in a condition to act voluntarily, of free will and with malice. "He must" says Foster "be capable of committing an action flowing from a wicked and corrupt motive; he must be in a condition to act *malo animo mala conscientia*. If a man has no motive at all, or no power of discerning what motives are wicked, he cannot be said to act maliciously, in the legal sense of the word."

Judge Smith defined with great care and definiteness, the several degrees of crime for which the prisoner was indicted. His instructions as to questions of law and rules to be followed, were clear and concise. The jury, notwithstanding, returned a verdict of "guilty of arson in the first degree," a crime for which the prisoner was not indicted. The judge reinstructed the jury, and they revised their verdict to "guilty of murder in the first degree." In polling the jury, one of the members stated in answer, "Yes, I think her death was caused by burning." This was quite contrary to the evidence, but is an indication, as was also the primary verdict, of the dazed condition and confusion of the minds of the jury, caused probably by the intricate questions they had to consider. Is it not reasonable to suppose that the mental responsibility of the prisoner, which was in fact the chief issue of the trial, was relegated to a secondary place?

The prisoner was sentenced to be hanged on the 18th of December, 1888. Thus ended the remarkable trial of Richard Barber.

It was the writer's privilege to examine the prisoner, about two weeks after the commission of the crime. At that time epilepsy was not entertained by the prisoner's counsel, as a particular plea, as no history of it had been obtained. The great atrocity of the crime by a man without previous criminal tendencies, or without apparent motive, suggested insanity. I gave him a careful physical examination. There were no external evidences of epilepsy, no abrasions of the tongue* or cicatrices about the head that he could not explain by wounds or accident. He still had the remains of the "skin disease" mentioned in the evidence, and he still suffered some from itching, but it was rapidly improving, as he informed me. He maintained as he did to the commissioners, that he never recollected having a fit, but that he suffered from headache in the morning and occasionally had "dizzy spells." He gave the stereotyped answer, that he recollected nothing about the tragedy, and admitted that he must have done it, as everybody said he did, but he did not remember it. He said he knew the penalty of the crime; expressed an apparently sincere affection for the victims and appeared somewhat moved, emotionally, while conversing about it. His mental condition was dull, and he was abstracted. It sometimes required a sharp repetition of the question to gain an answer, which did not appear the result of voluntary reticence, but of dullness. At the trial he was uniformly composed and unmoved; would sit in his chair with his head slightly inclined and gaze at the floor, as if he had no interest in the proceedings. The following report of his aspect at the trial are taken from the *Ithaca Daily Journal*.

On the second day of the trial, "Barber, the prisoner, appears as cool and unconcerned as any man in the room. At the close of yesterday's proceedings he was surrounded by a curious and admiring crowd, composed largely of ladies. He bore the curious gaze of the audience, and listened to their audible comments with the same stolid composure that has so far characterized him. He seems somewhat interested in the proceedings and a smile occasionally flits across his stoical features at the amusing bull of some excited witness."

* The signification of an absence of scars upon the tongue as evidence against epileptic fits, at any time of life, was particularly dwelt upon by the people's counsel. The expert witnesses, however, did not give this much weight, as it was maintained that wounds by epileptic bites in youth, in so vascular an organ as the tongue would be likely to disappear. Dr. Blaine, of the Willard Asylum medical staff, examined the tongues of seventy-two confirmed epileptics of years standing, resident in the Willard Asylum, who suffered from *grand mal*, and wounds or cicatrices were found upon but twenty of them,—less than thirty per cent.

After the verdict—"Barber received the verdict of the jury, convicting him of the heinous crime, with the same stolid composure and utter lack of feeling, which has characterized him throughout the trial."

After the sentence—"Not a quiver of a muscle, nor any change of color was there to indicate to the hundreds of close observers that Richard Barber felt or appreciated the awful position he occupied before the court and before the people of Tompkins county. Calm and impassive, with no perceptible change in his stoical countenance, Barber received his sentence, and quietly followed the sheriff from the court room to the jail. From all evidences of feeling shown during the trial, he might have been the casual witness of a drama instead of the chief actor in the tragedy."

Was Barber an epileptic during the winter of 1887-8? This question was of great import, and its affirmation was stoutly contested. The convulsions from which Barber had suffered in youth, had ceased at nine years of age. During the seventeen years interval, there was no evidence of epilepsy, until the past winter. The prosecution attempted to show by their expert witnesses, that it was improbable, admitting the convulsions in youth to have been epileptic, that a relapse after seventeen years of health, should have its primary manifestation in a homicidal act. While the defense claimed strong presumptive evidence that the prisoner had suffered from nocturnal epilepsy throughout the previous winter, they proved that during the said winter, he was nervous and at times stupid; that he would frequently appear in the morning "haggard and sour-looking" and his hands would tremble; that he would rest his head in his hands, and would say it "hurt;" that sometimes, "in playing checkers he seemed to be stupefied, and didn't know where to move, and stopped and pondered, and sometimes he would throw up his game and let it go;" that at various times he "wet the bed;" that he looked "tired and nervous" and was heard at various times to "talk in his sleep" and that his bed was occasionally in a very disordered condition.

It is well known that epileptics, after an interval of some years' freedom from convulsions, have changed manifestations of the disease. Barber had not lost the predisposition which he inherited, but with increasing strength and vigor, and years of healthy out-door occupation, the fits were suspended. What more reasonable presumption, claimed the defense, than that epilepsy, to which he was still predisposed, should be the expression of a nervous condition resulting from ill-health?

We have in the case of Barber, probably, as marked an instance of the transmission of a purely epileptic neurosis, as there is on record. Eighteen consanguineous relatives suffer from epilepsy; and there is no manifestation of other varieties of nervous disease except the resultant insanity, delirium and morbid irritability. Barber himself has had more than four hundred attacks of *haut mal*.

This man, after a winter of suffering, irritation and insomnia, during which he presents evidence of nocturnal fits, visits his nearest and best friends, in the evening. Without any apparent motive or object, and without any preparation for his deadly work, he seizes the nearest thing at hand—a small piece of wood—and commences a vigorous but unskillful assault upon his friend. His will and consciousness might have been suspended, and yet his special senses might have been acute. The calls of his friend to his wife in an adjoining room attract him to her, and he continues his assaults upon her. The lowest nature of the man has no volitional restraint. His tendency is to destroy, and he brings oil and fire to his aid, but it is at hand and is not prepared for his purposes. Though acting apparently rationally, he is destitute of a normal recognition of his outward relations and feelings. He passes to the door and gazes out. Returns and watches his fiendish work. The increasing fire suggests complete destruction, and the demoniacal nature—the nature of every man whose volition is inhibited—is content; and he passes away apparently in answer to the prayer of his victim.

Is it unreasonable to assume that this act, which is inconsistent with every instinct of conscious humanity, is the symptomatic expression of an epileptic neurosis?

He wanders about aimlessly, and the increasing brightness of the fire may attract his attention. Consciousness returns, and were he at rest, stupor and sleep would follow; but the bracing air of the cool March night, restores him to a low degree of wakefulness. He finds himself upon the highway and is accosted by a passing individual. He is asked about the fire. He does not know—under the assumption, of course he does not. His mental daze leads him to acquiesce to every proposition. Will he ride to the village? Yes. Will he go to the dance? Yes. Will he open the barn doors? Yes. And then, in his confusion, he wanders away, but does not run, or attempt to elude the officers who rush after him and seize him roughly, or answer to the gibes and threats of the crowd, for it is incomprehensible to him, and he cannot yet recog-

nize fully the outward relation of things. He is taken before his living victim and accused of the crime, which he does not deny. It is all a blank to him. He does not comprehend or reply. Is it a dream? Alas! no; he is roughly seized and with a shout of profanity, he is asked why he does not reply, and then he makes the only reply he could, under the assumption; "I cannot remember doing it."

This is one picture, but there is yet another. He may have had an undiscovered motive, and if he did, and the commission of the crime was premeditated, it would be wholly inconsistent with the theory of the defense. Even epileptics have criminal tendencies, and commit criminal acts at moments when they are mentally and legally responsible. So there remains a doubt, but it is a "reasonable, rational" one, and the prisoner should have had the benefit of it.

